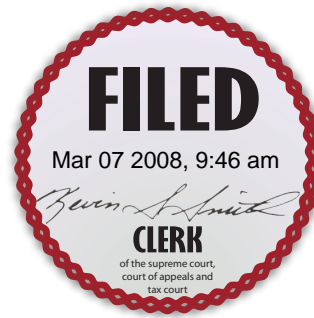


Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE  
COURT OF APPEALS OF INDIANA**

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JANEEN L. MATHES,  
  
Appellant-Respondent,

vs.

JOSEPH W. MATHES,  
  
Appellee-Petitioner.

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No. 31A01-0711-CV-531

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APPEAL FROM THE HARRISON SUPERIOR COURT  
The Honorable H. Lloyd Whitis, Judge  
Cause 31C01-0604-DR-63

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**March 7, 2008**

**MEMORANDUM DECISION – NOT FOR PUBLICATION**

**BAKER, Chief Judge**

Appellant-respondent Janeen L. Mathes appeals the trial court's order dissolving the marriage of Janeen and appellee-petitioner Joseph W. Mathes. Specifically, Janeen argues that (1) the trial court erred when it placed a value of \$15,000 on the personal property it awarded to her and (2) the trial court erred when it divided the marital assets and debts of the parties. We affirm in part, reverse in part, and remand with instructions included herein.

### FACTS

Janeen and Joseph married on October 23, 1987, and separated in March 2006. Joseph filed a petition for dissolution of marriage on April 10, 2006. A final hearing was held on May 15, 2007, and the parties stipulated to custody of their only child. On July 6, 2007, the trial court entered an order dividing the marital estate as follows:<sup>1</sup>

10. [Joseph] is awarded all right, title and interest in and to the 13.85 acres of real estate, valued at \$69,250.00 on Wiseman Road in Harrison County, Indiana and the gas lease with Quick Silver Resources subject to payment or credit for the following:

Mortgage	\$10,640.61
Community First Loan	\$13,350.00
Appraisal Fees	\$225.00
Mortgage Payments	\$9,861.60 <sup>[2]</sup>
Homeowner's Insurance	\$361.75
Health Insurance	\$1,002.00
Home Repairs	\$1,641.97
Real Estate Taxes	\$363.41
Mobile Home	\$3,000.00
W.F. Financial Account	<u>\$5,711.00</u>

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<sup>1</sup> The order also details child support payments, which are not at issue in this appeal.

<sup>2</sup> This appears to be a scrivener's error and, instead, should read \$9,681.60—the amount listed in Exhibit 9. However, after analyzing the list in conjunction with Exhibit 9, it appears that the trial court used the values in Exhibit 9 for its calculations. Thus, the error is harmless.

TOTAL

\$47,684.79<sup>[3]</sup>

11. [Joseph] is awarded the [1999 Ford F150 Super Cab short bed] truck subject to the loan, the 1989 Ford truck, the Horizon and the Dodge Caravan.

12. [Janeen] is awarded the 2006 Mazda subject to the loan.

13. [Joseph] is awarded the personal property listed in Exhibit 4 and valued at \$7,200.00.

14. [Janeen] is awarded the personal property listed in [Joseph's] Exhibit 5, 6, and 7 and [her] Exhibit B. . . . Items overlap on the exhibits and the Court assigns a value of \$15,000 for all items in these exhibits.

15. [Joseph and Janeen] are awarded the Orlando and Las Vegas time shares, which are ordered sold, and the parties shall equally share any profit or deficiency.

16. [Janeen] is ordered to pay all debts listed in Exhibit C except to W.F. Financial, and hold [Joseph] harmless for liability thereon.

17. [In sum, Joseph] is award[ed] the real estate valued at \$69,250.00 and is to pay obligations listed in Paragraph 10 totaling \$47,684.79 for a difference of \$21,565.26 not including the time shares and vehicles, [Janeen] is awarded personal property valued at \$15,000.00 and [Joseph] is awarded personal property value[d] at \$7,200.00 for a difference of \$7,800.00 which reduces the parties "equity" to \$13,765.21, one half equalization is \$6,882.60 which [Joseph] shall pay [Janeen] upon her delivery of a deed to the real estate to him.

Appellant's App. p. 4-6. Janeen now appeals.

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<sup>3</sup> Even after taking into account the scrivener's error, the debts listed in this portion of the trial court's order total \$45,977.34—\$1,707.45 less than the purported total. However, Exhibit 9 lists \$1,707.45 for "Car Insurance," an item not contained in the order. We are unable to discern whether the trial court intended to include the car insurance as a debt on the list and erroneously omitted it or, instead, purposely did not include the debt on the list and erroneously forgot to subtract \$1,707.45 from Exhibit 9's total. Because there is no evidence regarding the trial court's intent, we order the trial court to correct this error on remand.

## DISCUSSION AND DECISION

### I. Value of Personal Property

Janeen argues that the trial court abused its discretion when it placed a value of \$15,000 on the personal property it awarded to her. Specifically, Janeen contends that there is no evidence supporting the trial court's determination.

The trial court has discretion to select any date between the date the dissolution petition is filed and the date of the final hearing as the date for marital property valuation. Leonard v. Leonard, 877 N.E.2d 896, 900 (Ind. Ct. App. 2007). A trial court has broad discretion to value assets and its valuation will only be disturbed for an abuse of that discretion. Id. As long as sufficient evidence and reasonable inferences exist to support the valuation, the trial court did not abuse its discretion. Id.

At the hearing, both parties presented exhibits regarding the value of the personal property in Janeen's possession. Joseph presented a detailed list itemizing the property and listing a total value of \$11,700. Ex. 5. Janeen also presented a detailed list of the items but did not include their values. Ex. 6. On December 4, 2006, an independent auction service appraised some of the items and concluded that the property it appraised was worth \$4,459. Ex. B. Finally, Joseph presented a supplementary list itemizing additional purchases Janeen had made before the dissolution petition was filed. This list, which Joseph concedes overlapped with some of the items on his previous list, valued the items at \$6,193.19. Ex. 7. In awarding Janeen the personal property, the trial court noted that there was an "overlap" between the items on the parties' exhibits and concluded that the total value of the property was \$15,000. Appellant's App. p. 5.

We find the trial court's valuation of Janeen's personal property to be within the scope of the evidence presented at the hearing and, thus, not an abuse of discretion. It is clear that the trial court relied on Joseph's proposed figures to arrive at a value of \$15,000. Although the trial court did not detail the methodology it used to reach the figure, it could have relied on the amounts from Joseph's overlapping itemized lists, which totaled \$17,893.16. Ex. 5, 7. In sum, we disagree with Janeen's contention that the trial court's valuation of her personal property was not within the scope of the evidence presented at the hearing and, thus, reject her argument.

## II. Property Division

Although Janeen acknowledges that "it appears the Court attempted to fashion a 50-50 division of the marital estate in paragraph 17 of its decision," she argues that its attempt failed. Appellant's Br. p. 11. Specifically, she contends that the trial court actually awarded "a net distribution to [Joseph] of \$20,827.66 and a net deficit to [Janeen] of \$37,595.40, using the Court's values." Id. (emphasis added).

Marital property includes both assets and liabilities. McCord v. McCord, 852 N.E.2d 35, 45 (Ind. Ct. App. 2006). The trial court's authority to divide marital property is governed by Indiana Code section 31-15-7-4(a), which states that the court has authority to divide property that was (1) owned by either spouse before the marriage; (2) acquired by either spouse in his or her own right after the marriage and before final separation of the parties; or (3) acquired by their joint efforts.

The division of marital property in Indiana is a two-step process. Thompson v. Thompson, 811 N.E.2d 888, 912 (Ind. Ct. App. 2004). First, the trial court determines

what property must be included in the marital estate, which is “all the property acquired by the joint effort of the parties.” Id. Second, the trial court must divide the marital property under the statutory presumption that an equal division of marital property is just and reasonable. Id. The trial court, however, may deviate from this presumption. Chase v. Chase, 690 N.E.2d 753, 756 (Ind. Ct. App. 1998).

We apply a strict standard of review to a trial court’s distribution of property upon dissolution. Wilson v. Wilson, 732 N.E.2d 841, 844 (Ind. Ct. App. 2000). The division of marital assets is a matter within the sound discretion of the trial court. Hyde v. Hyde, 751 N.E.2d 761, 765 (Ind. Ct. App. 2001). The party challenging the trial court’s property division bears the burden of proof, and must overcome a strong presumption that the court complied with the property division statute<sup>4</sup> by considering each of the statutory factors. Id. Indeed, the presumption that the trial court correctly followed the law and made all proper considerations in dividing the marital estate is one of the strongest presumptions on appeal. Spivey v. Topper, 876 N.E.2d 781, 787 (Ind. Ct. App. 2007). Thus, we will reverse only if there is no rational basis for the award. Although the circumstances may have justified a different property distribution, we may not substitute our judgment for that of the trial court. Id. Finally, in deciding whether the division of property is just and reasonable, we will look at the trial court’s decision as a whole, not item by item. Akers v. Akers, 729 N.E.2d 1029, 1034 (Ind. Ct. App. 2000).

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<sup>4</sup> I.C. § 31-15-7-5.

After analyzing the record, we can only conclude that the trial court, in fact, divided the parties' marital property unequally by awarding Joseph \$29,735.06 and Janeen a deficit of \$37,595.40—a difference of \$67,330.46 in favor of Joseph. Specifically, the trial court divided the parties' debts and assets as follows:

<u>Joseph</u>	
• Real Estate	\$69,250
• Personal Property	\$7,200
• 1999 Ford Truck	\$6,145 <sup>5</sup>
• Debt listed in paragraph 10	(\$45,977.34) <sup>6</sup>
• <u>Payment to Janeen</u>	<u>(\$6,882.60)</u>
TOTAL	\$29,735.06

<u>Janeen</u>	
• Personal Property	\$15,000
• Debt listed in Exhibit C	(\$59,478) <sup>7</sup>
• <u>Payment from Joseph</u>	<u>\$6,882.60</u>
TOTAL	(\$37,595.40)

Although the trial court summarized its distribution and attempted to equalize the parties' allocations by ordering Joseph to pay Janeen \$6,882.60 in paragraph 17, unfortunately, it failed to include all of the marital property it had divided in this calculation. Most significantly, the trial court did not include the debt valued at \$59,478, which it had given to Janeen in paragraph 16.

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<sup>5</sup> While the trial court awarded Joseph the truck in paragraph 11, it did not include a value for the truck. As we will detail momentarily, the only evidence regarding the truck's value at the hearing valued the truck at \$6,145. Ex. 3; Tr. p. 16-17. Although the trial court erroneously failed to include the value of the truck in its computation in paragraph 17, we will include it in our calculation.

<sup>6</sup> As explained in footnote 3, the total amount of debt listed in paragraph 10 is erroneous and we will use \$45,977.34 for our calculations.

<sup>7</sup> As per the trial court's order, the \$5,269 debt to W.F. Financial is not included in this amount.

On appeal, Joseph argues that Janeen made the financial decisions for the family, paid the bills, and “that he never saw any bills.” Appellee’s Br. p. 12. In support of his position that it was within the trial court’s discretion to divide the debt listed in Exhibit C by giving him \$5,711 and giving Janeen “the balance,” id. at 13, Joseph directs us to Merrill vs. Merrill, 455 N.E.2d 1176 (Ind. Ct. App. 1983). In Merrill, the husband was the primary wage earner and the wife was responsible for the family’s finances. In affirming the trial court’s decision to hold the wife liable for most of the parties’ debt, we noted that, without the husband’s knowledge or consent, the wife had acquired various charge cards, taken out loans, and “eventually acquired a separate post office box where she was able to receive mail concerning these various accounts without [her husband’s] knowledge.” Id. at 1178.

Although a trial court may exercise its discretion and divide the marital property unequally, it must set forth its reasons for doing so. Galloway v. Galloway, 855 N.E.2d 302, 305 (Ind. Ct. App. 2006). Here, unlike in Merrill, there is no evidence in the record that the trial court intended to order an unequal distribution of the parties’ marital property. Instead, the trial court’s order suggests that it was attempting to equalize the parties’ distributions in paragraph 17 by ordering Joseph to pay Janeen \$6,882.60. Thus, Merrill is inapplicable and we reject Joseph’s argument.

In addition to erroneously omitting the debt valued at \$59,478 from its calculation, the trial court also failed to include the “value of the truck awarded to [Joseph] in paragraph 11.” Appellant’s Br. p. 11. While the trial court ordered Joseph to pay the truck loan with Community First Bank in paragraph 10, it erroneously failed to include



the value of the truck in Joseph's share of the marital property. Because the only evidence in the record demonstrates that the truck was worth \$6,145, we order the trial court to add that amount to Joseph's share of the marital property on remand.<sup>8</sup> Ex. 3; Tr. p. 16-17.

We acknowledge that it was not necessary for Janeen to file a motion to correct error before appealing the trial court's dissolution decree. Ind. Trial Rule 59(A). However, a motion to correct error would have been the more efficient tool for correcting the trial court's blatant mathematical errors. Had the trial court corrected these errors after reviewing a motion to correct error, the only remaining issue for Janeen to appeal would have been the trial court's valuation of her personal property. It seems unlikely that Janeen would have used her scarce resources to appeal such a trivial issue, which would have saved judicial resources and the parties' time and money. We advise parties to file a motion to correct error in situations such as these where it is clearly the more expeditious and effective course of action.

The judgment of the trial court is affirmed in part, reversed in part, and remanded with instructions for the trial court to:

(1) correct the figures listed in paragraph 10 of the dissolution decree by either adding \$1,707.45 for car insurance or subtracting that amount from the total as it is currently listed;

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<sup>8</sup> Although the trial court awarded Joseph three other vehicles in paragraph 11 and did not value those items, Joseph testified that the vehicles are uninsured "junk." Tr. p. 18. Janeen does not challenge this on appeal; therefore, we do not find it to be error.

(2) amend paragraph 17 of the dissolution decree to include the debt valued at \$59,478, which was given to Janeen in paragraph 16, when calculating her portion of the marital property;

(3) amend paragraph 11 of the dissolution decree to include the truck's \$6,145 value and amend paragraph 17 to add that amount to Joseph's portion of the marital property; and

(4) equally redistribute the marital property between the parties as the trial court sees fit or, if the court chooses to deviate from an equal presumption, state its reasons for doing so.

DARDEN, J., and BRADFORD, J., concur.